

UNITED STATES DISTRICT COURT

Southern

District of

New York

JENNY WHEELER and SHAWN WHEELER

AMENDED  
SUMMONS IN A CIVIL ACTION

V.

DOUGLAS STRONG, ISRAEL RIVERA, VICTOR  
DISLA and MARIA FRANCO,

CASE NUMBER: 08 Civ. 6766 (PKC)

TO: (Name and address of Defendant)

Douglas Strong, Israel Rivera, Victor Disla, and Maria Franco,  
c/o 33rd Precinct, 2207 Amsterdam Ave., New York, NY 10032

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

SIVIN & MILLER, LLP  
170 Broadway  
New York, NY 10038

an answer to the complaint which is served on you with this summons, within twenty days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

12/15/2008

(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER ( <i>PRINT</i> )	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL \$0.00
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> Executed on _____  <div style="text-align: center; font-size: small;">Date</div> </div> <div style="width: 60%;"> _____  <div style="text-align: center; font-size: small;">Signature of Server</div> </div> </div> <div style="text-align: center; margin-top: 20px;"> _____  <div style="text-align: center; font-size: small;">Address of Server</div> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JENNY WHEELER and SHAWN WHEELER

Plaintiffs,

AMENDED  
COMPLAINT

-against-

Trial by Jury Demanded

DOUGLAS STRONG, ISRAEL RIVERA,  
VICTOR DISLA and MARIA FRANCO,

Case No. 08 Civ. 6766 (PKC)

Defendants.

-----X

Plaintiffs, by their attorneys Sivin & Miller, LLP, complaining  
of defendants, allege as follows, upon information and belief:

**THE PARTIES AND JURISDICTION**

1. That at all times herein mentioned, plaintiffs were and are citizens of  
the State of New York.

2. That at all times herein mentioned, plaintiffs were and are husband  
and wife, and were and are married to each other.

3. That at all times herein mentioned, defendants were and are citizens  
of the State of New York

4. That at all times herein mentioned, defendant Douglas Strong  
(hereinafter "Strong") was and is a police officer employed by the New  
York Police Department (hereinafter "the NYPD").

5. That at all times herein mentioned, defendant Israel Rivera (hereinafter “Rivera”) was and is a police sergeant employed by the NYPD.

6. That at all times herein mentioned, defendant Victor Disla (hereinafter “Disla”) was and is a police officer employed by the NYPD.

7. That at all times herein mentioned, defendant Maria Franco (hereinafter “Franco”) was and is a police officer employed by the NYPD.

8. That at all times herein mentioned, defendants were acting within the course and scope of their employment with the NYPD.

9. That at all times herein mentioned, defendants were acting under color of state law.

10. That at all times herein mentioned, defendants were acting jointly and in concert with each other.

11. That this Court has jurisdiction over this action in that the causes of action arise under 42 USC § 1983.

### **THE FACTS**

12. Plaintiffs repeat and reallege each and every allegation set forth above as though fully set forth at length herein.

13. That on or about September 17, 2007, plaintiffs were on 178<sup>th</sup> Street between St. Nicholas Avenue and Audubon Avenue in the County of New York, City and State of New York.

14. That while plaintiffs were at the aforesaid location, they were approached by Strong.

15. That while plaintiffs were at the aforesaid location, they also were approached by Rivera or Disla.

16. That Strong and the other NYPD employee (Rivera or Disla), without first making any inquiries of plaintiffs, and without justification or privilege, seized plaintiffs, threw them up against a wall, searched plaintiffs and plaintiffs' possessions, handcuffed plaintiffs, and otherwise touched plaintiffs in an offensive manner and without plaintiffs' consent.

17. That during the aforementioned seizure and search, plaintiffs repeatedly told Strong and the other NYPD employee (Rivera or Disla), that plaintiff Jenny Wheeler was pregnant, and they asked Strong and the other NYPD employee to be careful in the manner in which they handled Jenny Wheeler.

18. That Rivera then authorized and directed that plaintiffs be brought to the 33<sup>rd</sup> Police Precinct, although Rivera had no justification for giving such a directive.

19. That Strong and either Rivera or Disla then forcibly brought plaintiffs to the 33<sup>rd</sup> Police Precinct.

20. That en route to and at the 33<sup>rd</sup> Police Precinct, Strong and either Rivera or Disla continued to touch plaintiffs in an offensive manner, without justification and without privilege, and without plaintiffs' consent.

21. That after they arrived at the 33<sup>rd</sup> Police Precinct, plaintiffs were held forcibly against their will and again were searched and subjected to indignities by Strong, Rivera, Disla, and Franco, again without justification or privilege.

22. That thereafter, plaintiffs were released from custody without being charged with any crimes, criminal offenses or other violations of law.

23. That as a result of defendants' wrongful conduct, as set forth above, plaintiff Jenny Wheeler miscarried.

24. That as a result of defendants' wrongful conduct, as set forth above, plaintiffs sustained other physical and psychological injuries, incurred medical and other expenses, and sustained other economic loss.

**FIRST CAUSE OF ACTION ON BEHALF OF  
JENNY WHEELER**

25. This plaintiff repeats and realleges each and every allegation contained above as though fully set forth at length herein.

26. That the aforesaid actions by defendants constituted an unlawful search, seizure and arrest of Jenny Wheeler without due process of law, and in violation of plaintiff's rights and privileges under the Fourth and Fourteenth Amendments to the United States Constitution.

27. That by virtue of the aforesaid, defendants are liable to plaintiff for compensatory damages pursuant to 42 USC § 1983.

**SECOND CAUSE OF ACTION ON BEHALF OF  
SHAWN WHEELER**

28. This plaintiff repeats and realleges each and every allegation contained above as though fully set forth at length herein.

29. That the aforesaid actions by defendants constituted an unlawful search, seizure and arrest of Shawn Wheeler without due process of law, and in violation of plaintiff's rights and privileges under the Fourth and Fourteenth Amendments to the United States Constitution.

30. That by virtue of the aforesaid, defendants are liable to plaintiff for compensatory damages pursuant to 42 USC § 1983.

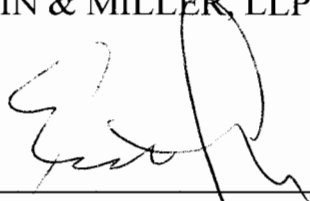
WHEREFORE, plaintiffs demand judgment against defendants, and each of them, as follows: On the First Cause of Action: Three Million (\$3,000,000) Dollars; On the Second Cause of Action: Two Million (\$2,000,000) Dollars; and plaintiffs demand punitive damages against

defendants, each in the amount of \$2,000,000, together with attorney's fees pursuant to 42 USC § 1988, and together with the costs and disbursements of this action.

Dated: New York, New York  
December 15, 2008

Yours, etc.  
SIVIN & MILLER, LLP

By



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Edward Sivin (ES 7351)  
Attorneys for Plaintiffs  
170 Broadway, Suite 600  
New York, NY 10038  
(212) 349-0300



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Case No. 08 Civ. 6766 (PKC)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JENNY WHEELER and SHAWN WHEELER,

Plaintiffs,

-against-

DOUGLAS STRONG, et. al.,

Defendants.

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AMENDED COMPLAINT

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